IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.378 OF 2004
WITH
NOTICE OF MOTION NO.618 OF 2004

Sujata Ashok Pokharkar....Petitioner

Versus

1.The Javali Sahakari Bank Ltd. & Ors..Respondents

Mr. Nitin Pradhan with Ms. Hemani Jhariya, for the Petitioners.
Mr. P.S. Gole, with Mr. S.D. Thakade for Respondent No.1.
Mr. A. Sayed, A.G.P. for Respondent Nos. 2, 4 and 7.

CORAM: F.I. REBELLO, J.
DATE : 29th October, 2004

P.C.:

1. Rule. Heard forthwith.

2. On July 29, 2004 at the request of the parties a Commissioner was appointed to take accounts. The petitioner had agreed to accept the accounts as made by the Commissioner. The Commissioner proceeded to make the accounts where a legal objection was raised by the petitioner. The Commissioner prima facie found that the accounts as done by the bank were in order. However, in view of the objection raised he was of the opinion that this Court should give direction on that count. To my mind the very purpose of appointing the Commissioner no longer subsists in the light of that the order appointing the Commissioner is recalled.

. In view of the above Motion does not survive and it is accordingly disposed of and the petition is heard forthwith.

3. The respondent by their application moved under

Section 101 of the Maharashtra Co-operative Societies Act claimed a sum of Rs.10,00,000/- being the principal amount and interest worked out upto 31st October, 2002 at Rs.5,50,801/- at the rate of 17% per annum. Paragraph 12 of the application shows that there was earlier loan transaction between the parties between 28th September, 2001 and 29th 29th October, 2002. Based on this application, notice was issued to the petitioner herein, who remained present. The roznama entry of 4th April, 2003 the English translation thereof reads as under:-

> "On behalf of the applicant bank Shri Tambe and Shri Bandal present. Shri Ashok Pokharkar present on behalf of the Respondent No.1. He admitted the loan balance and stated to repay loan balance within two months time. The said proposal was rejected by the representative of the bank."

In other words the claim as filed by the respondents herein was admitted by the petitioner subject only to a condition that he should be given time to make payment. That was on 4th April, 2003.

4. A recovery certificate was issued in favour of the respondent bank on 26th May, 2003 in a sum of Rs.15,50,801/- plus cost of Rs.8,990/- along with interest. There is some mention about penal interest, but the rate thereof has not been specified.

. On failure by the petitioners herein to pay the amount due notice was served on the respondent and by that notice

dated 1st September, 2003 a demand was made for a sum of Rs.18,61,021/- with further interest at the rate of 16% per annum on the sum of Rs.10,00,000/-. till the date of repayment. The sum claimed as on that date was Rs.18,61.021/-. It is this order which is the subject matter of the present petition.

5. On behalf of the petitioner their learned Counsel contends that on the sum of Rs.10.00 lakh interest could not have worked out for the short period to a sum of Rs.5,50,801/-. On behalf of the respondent learned Counsel contends that if the petitioner had opposed the same they would have explained it as the balance amount outstanding not only on the sum advanced of Rs.10.00 lakhs as on 30th March, 2002 but earlier interest which was pending in that account. As the petitioner did not dispute the amount the learned Recovery Officer proceeded on the basis of the admission.

6. To my mind ends of justice would be met if the following order is passed:-

(i) The claim of the respondent No.1 bank to a sum of Rs.15,50,801/- is not interfered with.

(ii) The costs of Rs.8,990/- are not interfered with.

(iii) From the date of application i.e. 1st November, 2002 till final payment the principal amount of Rs.10 lakhs will carry interest at 16% per annum. It is not open to the bank to either charge penal interest or any other interest apart from what is set

out in this order.

(iv) The amount already deposited would be adjusted against the amounts due and payable. Prothonotary & Senior Master is directed to make payment to the respodnent bank of the amount along with interest if any on bank furnishing authenticated copy of this order.

(v) The petitioner will pay the balance amount which will be calculated after adjusting the deposit made in this Court.

(vi) Rule made absolute accordingly. No order as to costs.

(vii) Costs of the Commissioner be paid by the petitioner.

. Parties/Authorities to act on an ordinary copy of this order duly authenticated by the Associate/Personal Secretary of this Court.

(F.I.REBELLO, J.)